United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 18-1722**
	)	**Issued: April 5, 2019**
DEPARTMENT OF VETERANS AFFAIRS, ATLANTA VETERANS AFFAIRS MEDICAL CENTER, Decatur, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 13, 2018 appellant, through counsel, filed a timely appeal from a June 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of lateral tracking of the left patella and patellofemoral arthritis causally related to her accepted July 1, 2013 employment injury.

FACTUAL HISTORY

On August 20, 2013 appellant, then a 35-year-old contract specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2013 she slipped and fell on the employing establishment premises while in the performance of duty due to a liquid which had been spilled on the floor. She alleged that she fell on the left side of her body injuring her left side, shoulder, arm, wrist, knee, and ankle.

On September 19, 2013 appellant underwent bilateral knee x-rays which demonstrated mild osteoarthritis within both medial joint compartments and minimal osteoarthritis within the left patellofemoral joint compartment as well as a transition sclerotic lesion within the posterior aspect of the proximal left tibial metaphysis.

In a note dated September 26, 2013, Dr. Michael B. Miller, an osteopath, reported that appellant was recovering from a fall on July 1, 2013 and diagnosed left shoulder contusion and bursitis, left patella-femoral contusion, and left ankle sprain. He noted that her left knee was tender at the anterior patella, but had no effusion and normal range of motion (ROM).

On October 16, 2013 Dr. Howard B. Krone, a Board-certified orthopedic surgeon, noted appellant's history of slipping on July 1, 2013 and falling on her left side. He reported patellofemoral crepitus and diagnosed mild chondromalacia patella.

On June 30, 2014 OWCP accepted appellant's claim for left knee contusion, left ankle sprain, and tear of the left peroneal tendon.

In a note dated July 30, 2014, Dr. Krone reported that appellant was experiencing chronic pain in the peripatellar area of the left knee. He noted that she continued to exhibit patellofemoral crepitus. Dr. Krone diagnosed chondromalacia patella and recommended a steroid injection. On August 4, 2014 he performed an injection due to patellofemoral arthritis of the left knee.

Appellant stopped work on September 2, 2014 and OWCP authorized wage-loss compensation. On September 2, 2014 Dr. Krone performed a left ankle peroneal brevis tendon repair.

On October 2, 2014 appellant reported left knee pain. In a note dated October 15, 2014, Dr. Krone diagnosed chondromalacia of the left knee. Appellant continued to report left knee pain. Dr. Krone reviewed her October 14, 2014 left knee magnetic resonance imaging (MRI) scan and found it was relatively normal except for some mild tilting at the patellofemoral joint explained by his diagnosis of chondromalacia patella. On October 20, 2014 appellant returned to full-time work with restrictions.

On October 28, 2014 OWCP expanded acceptance of appellant's July 1, 2013 claim to include contusion of the left shoulder. In a note dated November 6, 2014, Dr. Krone reported her complaints of poorly defined left shoulder pain and left wrist pain. He found full ROM in the left shoulder with negative impingement signs. Dr. Krone opined that appellant's pain complaints were "significantly overblown." He concluded that her knee complaints were secondary to chondromalacia patella which was a normal finding for females.

In notes dated December 11, 2014 through February 10, 2015, Dr. John Foster, a Board-certified orthopedic surgeon, examined appellant due to left shoulder pain, left wrist pain, left knee pain, left ankle pain, and numbness in the median nerve distribution of the left wrist. He noted appellant's slip and fall on July 1, 2013 at work. Dr. Foster reviewed appellant's October 14, 2014 left knee MRI scan and found a laterally tracking patella with a loose body posterior to the posterior cruciate ligament as well as mild patellofemoral degenerative changes. He noted no obvious meniscal tear or ligament tear.

On March 13, 2015 Dr. Foster performed a left shoulder arthroscopy with subacromial decompression and distal clavicle resection.

On April 3, 2015 OWCP expanded acceptance of appellant's July 1, 2013 claim to include left rotator cuff tendinitis and impingement. In a separate April 3, 2015 letter, it authorized her change of physicians to Dr. Foster.

In a May 6, 2015 note, Dr. Foster continued to report appellant's left medial knee discomfort. On April 10, 2015 appellant underwent a left knee magnetic resonance arthrogram (MRA) which found a cyst in the joint, mild synovial thickening consistent with synovitis, and mild chondral thinning of the lateral patellar facet. On May 27, 2015 Dr. Foster reviewed her left knee MRA findings and diagnosed lateral position of the patella, synovitis, and mild degenerative joint disease of the patellofemoral joint. Appellant denied any instability or feeling that her patella tracked left or right. She reported mild discomfort in the medial aspect of her left knee.

By decision dated June 19, 2015, OWCP denied appellant's claim for a left wrist condition causally related to her July 1, 2013 employment injury. On July 6, 2015 appellant requested an oral hearing before an OWCP hearing representative.

On July 28, 2015 Dr. Foster continued to note findings of lateral positioning of the patella and synovitis in the left knee.[3] Appellant returned to full-duty work on July 28, 2015.

In a letter dated February 3, 2016, appellant requested expansion of the acceptance of her claim to include lateral tracking left patella with mild degenerative joint disease of the patellofemoral joint.[4] She resubmitted Dr. Foster's July 28, 2015 note.

[3] On July 28, 2015 Dr. Foster found that appellant had reached maximum medical improvement and had 12 percent permanent impairment of the left upper extremity. Appellant filed a schedule award claim (Form CA-7) on September 17, 2015.

[4] Appellant also requested that her claim be accepted for left peroneal brevis tendon tear. In a note dated March 9, 2016, OWCP informed her that her claim was already accepted for left peroneal brevis tendon tear.

On February 3, 2016 appellant testified before an OWCP hearing representative regarding the injuries to the left side of her body from the July 1, 2013 fall, including her left wrist condition. By decision dated April 11, 2016, OWCP's hearing representative affirmed OWCP's June 19, 2015 decision. She found that appellant had not submitted medical rationale establishing a causal relationship between her diagnosed left wrist condition and her July 1, 2013 employment injury.

By decision dated June 16, 2016, OWCP denied appellant's request to expand acceptance of her claim to include lateral tracking left patella with mild degenerative joint disease of the patellofemoral joint. On June 24, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a note dated August 6, 2015, Dr. Thomas H. Myers, a Board-certified orthopedic surgeon, examined appellant due to left knee pain. He noted her history of a work-related slip and fall injury on July 1, 2013. Dr. Myers reported that appellant had a family history of arthritis and a diagnosis of chondromalacia patella. He reviewed her April 2015 MRI scan and found it to be of poor image quality. Dr. Myers diagnosed left chondromalacia patella, effusion of the left knee joint, and internal derangement of the left knee.

On February 15, 2016 appellant underwent an additional left knee MRI scan which demonstrated tears of the lateral meniscus, as well as patella, trochlea, and lateral compartment articular cartilage abnormalities. On March 23, 2016 Dr. Myers performed left knee surgery with lateral meniscectomy due to anterior and posterior meniscal root tears, knee abrasion arthroplasty, and knee chondroplasty due to grade III lateral tibial plateau chondromalacia.

On February 1, 2017 appellant testified at the oral hearing before OWCP's hearing representative regarding her left knee conditions. She noted that she had no other knee injuries since her July 1, 2013 employment injury.

By decision dated March 28, 2017, OWCP's hearing representative affirmed the June 16, 2016 decision finding that appellant had not provided rationalized medical opinion evidence establishing that her diagnosed lateral tracking of the left patella and mild degenerative joint disease were causally related to the July 1, 2013 employment injury.

On March 8, 2018 appellant, through counsel, requested reconsideration of the March 28, 2017 decision.

Appellant submitted a March 31, 2017 report from Dr. Myers. Dr. Myers noted her history of injury on July 1, 2013 as well as her February 26, 2016 MRI scan. He performed left knee surgery based on this MRI scan. Dr. Myers opined that it was difficult to determine which of appellant's left knee conditions were traumatic and which were degenerative. He reported that she had a family history of arthritis and a preexisting condition of lateral patellar malalignment, both of which caused or contributed to degenerative joint disease in the knee which preexisted her work injury. Dr. Myers opined that appellant's work injury "likely" aggravated the arthritis in the patellofemoral joint. He also opined that her lateral meniscus tear "appeared" traumatic with meniscal root damage both anteriorly and posteriorly. Dr. Myers noted that the traumatic meniscal damage was unrecognized until appellant underwent a high quality MRI scan. He concluded, "The meniscal damage is likely related to the on[-]the[-]job injury and contributed to her disability."

By decision dated June 20, 2018, OWCP denied modification of the March 28, 2017 decision. It found that appellant had not submitted the necessary rationalized medical opinion evidence to establish additional left knee conditions causally related to her July 1, 2013 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[8] To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of lateral tracking

[5] *Supra* note 2.

[6] *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *Tracey P. Spillane*, 54 ECAB 608 (2003).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[10] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[11] *F.H., supra* note 6.

of the left patella and patellofemoral arthritis causally related to the accepted July 1, 2013 employment injury.

In support of her claim appellant submitted a series of notes from Drs. Miller, Krone, Foster, and Myers diagnosing left knee lateral tracking of the left patella and left knee degenerative joint disease. As these physicians did not attribute her diagnosed left knee conditions to the July 1, 2013 employment injuries, their reports are of diminished probative value.[12] Medical evidence that does not offer an opinion on the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] Thus, these reports are insufficient to meet appellant's burden of proof regarding expansion of her claim.

Appellant also submitted a March 31, 2017 report from Dr. Myers. Dr. Myers noted her history of injury on July 1, 2013 as well as her February 26, 2016 MRI scan. He indicated that it was difficult to determine which of appellant's left knee conditions were traumatic and which were degenerative. Dr. Myers noted that she had a family history of arthritis and a preexisting condition of lateral patellar malalignment both of which caused or contributed to degenerative joint disease in the knee which preexisted her work injury. He opined that appellant's work injury "likely" aggravated the arthritis in the patellofemoral joint. Dr. Myers also opined that her lateral meniscus tear "appeared" traumatic with meniscal root damage both anteriorly and posteriorly. The Board finds that his opinions on causal relationship are speculative in nature and thus of little probative value.[14] Furthermore, Dr. Myers did not provide sufficient explanation of the mechanism of injury. Such rationale is particularly important given appellant's history of underlying, preexisting left knee conditions.[15]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.[16] Appellant failed to provide reasoned medical evidence demonstrating that she sustained lateral tracking of the left patella and patellofemoral arthritis or that these conditions were aggravated by the accepted July 1, 2013 employment injury. Accordingly, the Board finds that he has failed to meet her burden of proof to establish expansion of the accepted conditions of her claim.[17]

Appellant may submit new evidence or argument with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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[12] *F.H., supra* note 6.

[13] *Id.*

[14] *See id.; M.D.*, Docket No. 18-0195 (issued September 13, 2018) (the Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value).

[15] *F.H., supra* note 6; *S.F.*, Docket No. 18-0444 (issued October 4, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *L.B.*, Docket No. 14-1687 (issued June 10, 2015).

[16] *Supra* note 8.

[17] *S.A., supra* note 8; *E.P.*, Docket No. 16-0153 (issued August 24, 2016).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of lateral tracking of the left patella and patellofemoral arthritis causally related to her accepted July 1, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board